

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment                    ) NOTICE OF AMENDMENT  
of ARM 24.153.403, fee schedule                    )

TO: All Concerned Persons

1 On March 17, 2005, the Board of Landscape Architects published MAR Notice No. 24-153-28 regarding the public hearing on the proposed amendment of the above-stated rule at page 365 of the 2005 Montana Administrative Register, issue no. 5.

2 On April 7, 2005, a public hearing was conducted in Helena, Montana, on the proposed amendment, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period.

3. The Board has thoroughly considered the comments received. A summary of the comments received and the Board's responses are as follows:

Comment 1: Ronald Yates believed there was enough flexibility in how administrative costs are spread and that they could be spread to other boards as well.

Response 1: The Board is required to make fees commensurate with costs under section 37-1-134, MCA. Boards are also required to be 'self-sufficient'. For this to occur, the Board will need to increase its fee schedule. The Legislative Auditor's office has determined in its last audit that it is improper to cost-shift one board's costs to other boards.

Comment 2: Kent Watson commented that this is the largest fee increase ever proposed by the Board and it would severely cripple the profession because licensees can "ill afford" to pay the fee increase proposed. He also questioned the \$9,000 consultant's fee.

Response 2: The Board states that the consultant's fee was for the CLARB Examination fees and was basically a "pass-through" expense. Again the Board referred to its need to make fees commensurate with costs and acknowledged that there may be a diminishment of the number of licensees because of the proposed increase in fees.

Comment 3: Angela Feser testified that these fee increases are prohibitive and would give her incentive to pack up and move out of state. She also believed that the fee

increases would cause fewer licensed landscape architects to operate in Montana.

Response 3: The Board agrees with her comment but feels it is caught between a 'rock and a hard place'. Fee increases are absolutely necessary.

Comment 4: Bruce Lutz wrote that since renewal fees occur once a year, staff time should be minimal and the current fees should cover that.

Response 4: The Board notes that the renewal fees must cover not only the staff time for issuing annual license renewals, but the fees must cover the rest of the Board's operations. Those costs include providing for the Board's regular meetings, the cost of a proportionate share of program staff and Board counsel, the cost of a proportionate share of the prosecuting counsel and disciplinary functions, the proportionate cost of maintaining the on-line licensee database (including on-line renewal and licensee look-up functions). In addition, the proportionate cost of program operations includes having Department staff available to answer questions from licensees, applicants, and the general public, concerning licensed landscape architects. There are numerous "behind the scenes" costs, such as office rent, accounting and budgeting support, mailing costs, etc. that go into the costs allocated to the Board and the landscape architect licensing program. While a portion of those costs are paid for by license applicants, the bulk of the costs are paid for by existing licensees.

Comment 5: James Pool wrote that practitioners in this state need to be presented with accurate, thorough and easy to understand spreadsheets clearly outlining the board's finances so that they can see, understand and trust the numbers.

Response 5: The Board acknowledges that the State of Montana's accounting and budgeting system is complex and rather intimidating for those individuals who are not familiar with that system. The Board pledges to continue to work with the Department to obtain financial information regarding the Board's operations that can be presented in a format understandable by ordinary individuals and the licensees.

Comment 6: Shelly Engler felt that approximately half of the landscape architects would surrender their license(s) if the fees were increased as originally proposed. She stated that as a consequence, there would be fewer landscape architects to serve the public. She also expressed her dismay at the way budget issues related to the Board have been handled by the Department.

Response 6: The Board acknowledges her concerns and notes that other boards are also suffering from this type of

budgetary crisis. The Board's response comes back to the fact that fees must be commensurate with costs. If the Board's fees are not, then the Board would not be in compliance with statutory mandate. After considering all of the comments, the Board concludes that the least onerous resolution to the Board's dilemma is to increase the initial application fee and the annual renewal fee, but to significantly reduce the amount of the increase from what was originally proposed. The Board acknowledges that its decision is a compromise, but believes that it is the best it can do at the present. The Board will continue to engage in a dialogue with the Department to see what options exist to decrease the costs of operation of the licensing program for landscape architects.

4. The Board expresses its appreciation for all the comments and testimony given and was grateful to those who took the time for such commentary and testimony.

5. After considering the comments, the Board has adopted ARM 24.153.403 exactly as proposed, but with the following changes, stricken matter interlined, new matter underlined:

24.153.403 FEE SCHEDULE (1) remains as proposed.  
(2) The fees for landscape architects are as follows:  
(a) Application fee for license by examination (includes original license fee) ~~\$575~~ 325  
(b) License renewal ~~500~~ 250  
(c) through (3) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-66-202, MCA  
IMP: 37-1-134, 37-66-202, 37-66-301, 37-66-304, 37-66-307, MCA

BOARD OF LANDSCAPE ARCHITECTS  
SHELLY ENGLER, CHAIRPERSON

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

This rule notice has been reviewed by a rule reviewer for the Department of Labor and Industry ("the Department") pursuant to 2-4-110(2), MCA, on behalf of the Board of Landscape Architects. The Board of Landscape Architects is attached to the Department for administrative purposes only pursuant to 2-15-1762, MCA. Pursuant to 2-15-121(1)(a), MCA, the Board may exercise its quasi-legislative functions without the approval or control of the Department. The Department does not necessarily agree with the Board that ARM 24.153.403 appropriately implements 37-1-134, MCA, because current projections indicate that the Board of Landscape Architects will operate with a deficit. However, under the

circumstances, the Department concurs that amendments to ARM 24.153.403 adopted by the Board of Landscape Architects better implement the statutes the rule purports to implement than the rule did without those amendments.

/s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

Certified to the Secretary of State May 2, 2005